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REPORT
98-1074

DEVELOPMENTAL DISABILITIES ACT OF 1984

SEPTEMBER 25, 1984.—Ordered to be printed

98-527

Mr. WAXMAN, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 5603]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5603) to amend the Public Health Service Act to revise and extend the authorities of that Act for assistance for alcohol and drug abuse and mental health services and to revise and extend the Developmental Disabilities Assistance and Bill of Rights Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Developmental Disabilities Act of 1984".

SEC. 2. Title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 is amended to read as follows:

**"TITLE I—PROGRAMS FOR PERSONS WITH
DEVELOPMENTAL DISABILITIES**

"PART A—GENERAL PROVISIONS

"SHORT TITLE

"SEC. 100. This title may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act'.

"FINDINGS AND PURPOSES

"SEC^ 101. (a) The Congress finds that—

"(1) there are more than two million persons with developmental disabilities in the United States;

"(2) individuals with disabilities occurring during their developmental period are more vulnerable and less able to reach an independent level of existence than other handicapped individuals who generally have had a normal developmental period on which to draw during the rehabilitation process;

"(3) persons with developmental disabilities often require specialized lifelong services to be provided by many agencies in a coordinated manner in order to meet the persons' needs;

"(4) generic service agencies and agencies providing specialized services to disabled persons tend to overlook or exclude persons with developmental disabilities in their planning and delivery of services; and

"(5) it is in the national interest to strengthen specific programs, especially programs that reduce or eliminate the need for institutional care, to meet the needs of persons with developmental disabilities.

"(b)(1) It is the overall purpose of this title to assist States to (A) assure that persons with developmental disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community, and (B) establish and operate a system which coordinates, monitors, plans, and evaluates services which ensures the protection of the legal and human rights of persons with developmental disabilities.

"(2) The specific purposes of this title are—

"(A) to assist in the provision of comprehensive services to persons with developmental disabilities, with priority to those persons whose needs are not otherwise met under the Rehabilitation Act of 1973 or other health, education, or welfare programs;

"(B) to assist States in appropriate planning activities;

"(C) to make grants to States and public and private, nonprofit agencies to establish model programs, to demonstrate innovative habilitation techniques, and to train professional and paraprofessional personnel with respect to providing services to persons with developmental disabilities;

"(D) to make grants to university affiliated facilities to assist them in administering and operating demonstration facilities for the provision of services to persons with developmental disabilities and interdisciplinary training programs for personnel needed to provide specialized services for these persons; and

"(E) to make grants to support a system in each State to protect the legal and human rights of all persons with developmental disabilities.

"DEFINITIONS

"SEC. 102. For purposes of this title:

"(1) The term 'State' includes Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa,

the Virgin Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

"(2) The term 'facility for persons with developmental disabilities' means a facility, or a specified portion of a facility, designed primarily for the delivery of one or more services to persons with one or more developmental disabilities.

"(3) The terms 'nonprofit facility for persons with developmental disabilities' and 'nonprofit private institution of higher learning' mean, respectively, a facility for persons with developmental disabilities and an institution of higher learning which are owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual. The term 'nonprofit private agency or organization' means an agency or organization which is such a corporation or association or which is owned and operated by one or more of such corporations or associations.

"(4) The term 'construction' includes construction of new buildings, acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical, transportation, and recreation facilities); including architect's fees, but excluding the cost of offsite improvements and the cost of the acquisition of land.

"(5) The term 'cost of construction' means the amount found by the Secretary to be necessary for the construction of a project.

"(6) The term 'title', when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than fifty years undisturbed use and possession for the purposes of construction and operation of the project.

"(7) The term 'developmental disability' means a severe, chronic disability of a person which—

"(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

"(B) is manifested before the person attains age twenty-two;

"(C) is likely to continue indefinitely;

"(D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

"(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

"(8) The term 'independence' means the extent to which persons with developmental disabilities exert control and choice over their own lives.

"(9) The term 'productivity' means—

"(A) engagement in income-producing work by a person with developmental disabilities which is measured through

improvements in income level, employment status, or job advancement, or

"(B) engagement by a person with developmental disabilities in work which contributes to a household or community-

"(10) The term 'integration' means—

"(A) the—

"(i) use by persons with developmental disabilities of the same community resources that are used by and available to other citizens, and

"(ii) participation by persons with developmental disabilities in the same community activities in which nonhandicapped citizens participate, together with regular contact with nonhandicapped citizens, and

"(B) the residence by persons with developmental disabilities in homes or in home-like settings which are in proximity to community resources, together with regular contact with nonhandicapped citizens in their communities.

"(11)(A) The term 'services for persons with developmental disabilities' means—

"(i) priority services; and

"(ii) any other specialized services or special adaptations of generic services for persons with developmental disabilities, including diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation and socialization, counseling of the person with such disability and the family of such person, protective and other social and sociolegal services, information and referral services, follow-along services, nonvocational social-developmental services, transportation services necessary to assure delivery of services to persons with developmental disabilities, and services to promote and coordinate activities to prevent developmental disabilities.

"(B) The term 'service activities' includes, with respect to a priority service or a service described in subparagraph (A)(ii)—

"(i) the provision of specialized services in the area which respond to unmet needs of persons with developmental disabilities;

"(ii) model service programs in the area;

"(iii) activities to increase the capacity of agencies to provide services in the area;

"(iv) the coordination of the provision of services in the area with the provision of other services;

"(v) outreach to individuals for the provision of services in the area;

"(vi) the training of personnel, including parents of persons with developmental disabilities, professionals, and volunteers, to provide services in the area; and

"(vii) similar activities designed to expand the use and availability of services in the area.

"(C) The term 'priority services' means alternative community living arrangement services, employment related activities, child development services, and case management services.

"(D) The term 'alternative community living arrangement services' means such services as will assist persons with developmental disabilities in developing or maintaining suitable residential arrangements in the community, including in-house services (such as personal aides and attendants and other domestic assistance and supportive services), family support services, foster care services, group living services, respite care, recreation and socialization services, and staff training, placement, and maintenance services.

"(E) The term 'employment related activities' means such services as will increase the independence, productivity, or integration of a person with developmental disabilities in work settings, including such services as employment preparation and vocational training leading to supported employment, incentive programs for employers who hire persons with developmental disabilities, services to assist transition from special education to employment, and services to assist transition from sheltered work settings to supported employment settings or competitive employment.

"(F) The term 'supported employment' means paid employment which—

"(i) is for persons with developmental disabilities for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;

"(ii) is conducted in a variety of settings, particularly worksites in which persons without disabilities are employed; and

"(iii) is supported by any activity needed to sustain paid work by persons with disabilities, including supervision, training, and transportation.

"(G) The term 'child development services' means such services as will assist in the prevention, identification, and alleviation of developmental disabilities in children, including early intervention services, counseling and training of parents, early identification of developmental disabilities, and diagnosis and evaluation of such developmental disabilities.

"(H) The term 'case management services' means such services to persons with developmental disabilities as will assist them in gaining access to needed social, medical, educational, and other services. Such term includes—

"(i) follow-along services which ensure, through a continuing relationship, lifelong if necessary, between an agency or provider and a person with a developmental disability and the person's immediate relatives or guardians, that the changing needs of the person and the family are recognized and appropriately met; and

"(ii) coordination services which provide to persons with developmental disabilities support, access to (and coordina-

tion of) other services, information on programs and services, and monitoring of the persons' progress.

"(12) The term 'satellite center' means a public or private nonprofit entity which—

"(A)(i) is affiliated with one or more university affiliated facilities;

"(ii) functions as a community or regional extension of such university affiliated facility or facilities in the delivery of services to persons with developmental disabilities, and their families, who reside in geographical areas where adequate services are not otherwise available; and

"(iii) may engage in the activities described in subparagraph (A), (B), or (C) of paragraph (13); or

"(B) is affiliated with one or more university affiliated facilities and which provides for at least—

"(i) interdisciplinary training for personnel concerned with the provision of direct or indirect services to persons with developmental disabilities; and

"(ii) dissemination of findings relating to the provision of services to persons with developmental disabilities.

"(13) The term 'university affiliated facility' means a public or nonprofit facility which is associated with, or is an integral part of, a college or university and which provides for at least the following activities:

"(A) Interdisciplinary training for personnel concerned with developmental disabilities which is conducted at the facility and through outreach activities.

"(B) Demonstration of—

"(i) exemplary services relating to persons with developmental disabilities in settings which are integrated in the community; and

"(ii) technical assistance to generic and specialized agencies to provide services to increase the independence, productivity, and integration into the community of persons with developmental disabilities, such as the development and improvement of quality assurance mechanisms.

"(C)(i) Dissemination of findings relating to the provision of services under subparagraph (B) of this paragraph, and
(ii) providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research which would provide data and information that will assist in increasing the independence, productivity, and integration into the community of persons with developmental disabilities.

"(14) The term 'Secretary' means the Secretary of Health and Human Services.

"(15) The term 'State Planning Council' means a State Planning Council established under section 124.

"FEDERAL SHARE

"SEC. 103. (a) The Federal share of all projects in a State supported by an allotment to the State under part B may not exceed 75 percent of the aggregate necessary costs of all such projects, as determined by the Secretary, except that in the case of projects located in urban or rural poverty areas, the Federal share of all such projects may not exceed 90 percent of the aggregate necessary costs of such projects, as determined by the Secretary.

"(b) The Federal share of any project to be provided through grants under part D may not exceed 75 percent of the necessary cost of such project, as determined by the Secretary, except that if the project is located in an urban or rural poverty area, the Federal share may not exceed 90 percent of the project's necessary costs as so determined.

"(c) The non-Federal share of the cost of any project assisted by a grant or allotment under this title may be provided in kind.

"(d) For the purpose of determining the Federal share with respect to any project, expenditures on that project by a political subdivision of a State or by a nonprofit private entity shall, subject to such limitations and conditions as the Secretary may by regulation prescribe, be deemed to be expenditures by such State in the case of a project under part B or by a university affiliated facility or a satellite center, as the case may be, in the case of a project assisted under part D.

"RECORDS AND AUDIT

"SEC. 104- (a) Each recipient of assistance under this title shall keep such records as the Secretary shall prescribe, including (1) records which fully disclose (A) the amount and disposition by such recipient of the proceeds of such assistance, (B) the total cost of the project or undertaking in connection with which such assistance is given or used, and (C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and (2) such other records as will facilitate an effective audit.

"(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of assistance under this title that are pertinent to such assistance.

"RECOVERY

"SEC. 105. If any facility with respect to which funds have been paid under part B or D shall, at any time within twenty years after the completion of construction—

' (1) be sold or transferred to any person, agency, or organization which is not a public or nonprofit private entity, or

"(2) cease to be a public or other nonprofit facility for persons with developmental disabilities,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be a public or other nonprofit facility for persons with developmental disabilities, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the

parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment. The Secretary, in accordance with regulations prescribed by the Secretary, may, upon finding good cause therefor, release the applicant or other owner from the obligation to continue such facility as a public or other nonprofit facility for persons with developmental disabilities.

"STATE CONTROL OF OPERATIONS

"SEC. 106. Except as otherwise specifically provided, nothing in this title shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility for persons with developmental disabilities with respect to which any funds have been or may be expended under this title.

"REPORTS

"SEC. 107. (a) By January 1 of each year, the State Planning Council of each State shall prepare and transmit to the Secretary a report concerning activities carried out during the preceding fiscal year with funds paid to the State under part B for such fiscal year. Each such report shall be in a form prescribed by the Secretary by regulation and shall contain—

"(1) a description of such activities and the accomplishments resulting from such activities;

"(2) a comparison of such accomplishments with the goals, objectives, and proposed activities specified by the State in the State plan submitted under section 122 for such fiscal year; and

"(3) an accounting of the manner in which funds paid to a State under part B for a fiscal year were expended.

"(b) By January 1 of each year, each protection and advocacy system established in a State pursuant to part C shall prepare and transmit to the Secretary a report which describes the activities, accomplishments, and expenditures of the system during the preceding fiscal year.

"(c)(1) By April 1 of each year the Secretary shall prepare and transmit to the President, the Congress, and the National Council on the Handicapped a report which describes—

"(A) the activities and accomplishments of programs supported under parts B, C, D, and E of this title; and

"(B) the progress made in States in improving the independence, productivity, and integration into the community of persons with developmental disabilities and any activities or services needed to improve such independence, productivity, and integration.

"(2) In preparing the report required by this subsection, the Secretary shall use and include information submitted to the Secretary in the reports required under subsections (a) and (b) of this section.

"RESPONSIBILITIES OF THE SECRETARY

"SEC. 108. (a) *The Secretary, not later than 180 days after the date of enactment of any Act amending the provisions of this title, shall promulgate such regulations as may be required for the implementation of such amendments.*

"(b) *Within 90 days after the date of enactment of the Developmental Disabilities Act of 1984, the Secretary of Health and Human Services and the Secretary of Education shall establish an interagency committee composed of representatives of the Administration for Developmental Disabilities of the Department of Health and Human Services, the Office of Special Education and Rehabilitative Services of the Department of Education, the Department of Labor, and such other Federal departments and agencies as the Secretary of Health and Human Services and the Secretary of Education consider appropriate. Such interagency committee shall meet regularly to coordinate and plan activities conducted by Federal departments and agencies for persons with developmental disabilities.*

"EMPLOYMENT OF HANDICAPPED INDIVIDUALS

"SEC. 109. *As a condition of providing assistance under this title, the Secretary shall require that each recipient of such assistance take affirmative action to employ and advance in employment qualified handicapped individuals on the same terms and conditions required with respect to the employment of such individuals by the provisions of the Rehabilitation Act of 1973 which govern employment (1) by State rehabilitation agencies and rehabilitation facilities, and (2) under Federal contracts and subcontracts.*

"RIGHTS OF THE DEVELOPMENTALLY DISABLED

"SEC. 110. *Congress makes the following findings respecting the rights of persons with developmental disabilities:*

'(1) *Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.*

"(2) *The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person's personal liberty.*

"(3) *The Federal Government and the States both have an obligation to assure that public funds are not provided to any institutional or other residential program for persons with developmental disabilities that—*

"(A) does not provide treatment, services, and habilitation which is appropriate to the needs of such persons; or

"(B) does not meet the following minimum standards:

"(i) Provision of a nourishing, well-balanced daily diet to the persons with developmental disabilities being served by the program.

"(ii) Provision to such persons of appropriate and sufficient medical and dental services.

"(iii) Prohibition of the use of physical restraint on such persons unless absolutely necessary and prohibi-

tion of the use of such restraint as a punishment or as a substitute for a habilitation program.

"(iv) Prohibition on the excessive use of chemical restraints on such persons and the use of such restraints as punishment or as a substitute for a habilitation program or in quantities that interfere with services, treatment, or habilitation for such persons.

"(v) Permission for close relatives of such persons to visit them at reasonable hours without prior notice.

"(vi) Compliance with adequate fire and safety standards as may be promulgated by the Secretary.

"(4) All programs for persons with developmental disabilities should meet standards which are designed to assure the most favorable possible outcome for those served, and—

"(A) in the case of residential programs serving persons in need of comprehensive health-related, habilitative, or rehabilitative services, which are at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded promulgated in regulations of the Secretary on January 17, 1974 (39 Fed. Reg. pt. II), as appropriate when taking into account the size of the institutions and the service delivery arrangements of the facilities of the programs;

"(B) in the case of other residential programs for persons with developmental disabilities, which assure that care is appropriate to the needs of the persons being served by such programs, assure that the persons admitted to facilities of such programs are persons whose needs can be met through services provided by such facilities, and assure that the facilities under such programs provide for the humane care of the residents of the facilities, are sanitary, and protect their rights; and

"(C) in the case of nonresidential programs, which assure the care provided by such programs is appropriate to the persons served by the programs.

The rights of persons with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all persons.

"PART B—FEDERAL ASSISTANCE FOR PLANNING AND SERVICE
ACTIVITIES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

"PURPOSE

"SEC. 121. The purpose of this part is to provide payments to States to plan for, and to conduct, activities which will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

"STATE PLANS

"SEC. 122. (a) Any State desiring to take advantage of this part must have a State plan submitted to and approved by the Secretary under this section.

"(b) In order to be approved by the Secretary under this section, a State plan for the provision of services for persons with developmental disabilities must meet the following requirements:

"(1)(A) The plan must provide for the establishment of a State Planning Council, in accordance with section 124, for the assignment to the Council of personnel in such numbers and with such qualifications as the Secretary determines to be adequate to enable the Council to carry out its duties under this title, and for the identification of the personnel so assigned.

"(B) The plan must designate the State agency or agencies which shall administer or supervise the administration of the State plan and, if there is more than one such agency, the portion of such plan which each will administer (or the portion the administration of which each will supervise).

"(C) The plan must provide that each State agency designated under subparagraph (B) will keep such records and afford such access thereto as the Secretary or the State Planning Council finds necessary.

"(D) The plan must provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this part.

"(2) The plan must—

"(A) set out the specific objectives to be achieved under the plan and a listing of the programs and resources to be used to meet such objectives;

"(B) set forth the non-Federal share that will be required in carrying out each such objective and program;

"(C) describe (and provide for the review annually and revision of the description not less often than once every three years) (i) the extent and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans for federally assisted State programs as the State conducts relating to education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, and comprehensive health and mental health, and under such other plans as the Secretary may specify, and (ii) how funds allotted to the State in accordance with section 125 will be used to complement and augment rather than duplicate or replace services for persons with developmental disabilities who are eligible for Federal assistance under such other State programs;

"(D) for each fiscal year, assess and describe the extent and scope of the priority services being or to be provided under the plan in the fiscal year; and

"(E) establish a method for the periodic evaluation of the plan's effectiveness in meeting the objectives described in subparagraph (A).

"(3) The plan must contain or be supported by assurances satisfactory to the Secretary that—

"(A) the funds paid to the State under section 125 will be used to make a significant contribution toward strengthening

services for persons with developmental disabilities through agencies in the various political subdivisions of the State;

"(B) part of such funds will be made available by the State to public or nonprofit private entities;

"(C) not more than 25 percent of such funds will be allocated to the agency or agencies designated under section 122(b)(1)(B) for the provision of services by such agency or agencies;

"(D) such funds paid to the State under section 125 will be used to supplement and to increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds; and

"(E) there will be reasonable State financial participation in the cost of carrying out the State plan.

"(4)(A) The plan must provide for the examination not less often than once every three years of the provision, and the need for the provision, in the State of the four priority services.

"(B) The plan must provide for the development, not later than the second year in which funds are provided under the plan after the date of the enactment of the Developmental Disabilities Act of 1984, and the timely review and revision of, a comprehensive statewide plan to plan, financially support, coordinate, and otherwise better address, on a statewide and comprehensive basis, unmet needs in the State for the provision of services for persons with developmental disabilities as follows:

"(i)(V Except as provided in subclause (II), the plan shall provide for the provision of at least one but not more than two priority services.

"(II) In fiscal year 1987, the plan may provide for the provision of three priority services.

"(ii) For any fiscal year after fiscal year 1986 for which the total appropriations under section 130 are at least \$50,250,000, the plan shall provide for the provision of employment related activities among the priority services to be provided under the plan.

"(iii) At the option of the State, the plan may provide for the provision of one or more additional services for persons with developmental disabilities from the services described in section 102(1 l)(A)(ii).

"(C) Notwithstanding the requirements of subparagraph (B), upon the application of a State, the Secretary, pursuant to regulations which the Secretary shall prescribe, may permit the portion of the funds which must otherwise be expended under the State plan for service activities in a limited number of services to be expended for service activities in additional services if the Secretary determines that the expenditures of the State on service activities in the initially specified services has reasonably met the need for those services in the State in comparison to the extent to which the need for such additional services has been met in such State. Such additional areas shall, to the maximum extent feasible, be areas within the priority services.

"(D) The plan must be developed after consideration of the data collected by the State education agency under section 618(b)(3) of the Education of the Handicapped Act.

"(E)(i) The plan must provide that not less than 65 percent of the amount available to the State under section 125 will be expended for service activities in the priority services.

"(ii) The plan must provide that the remainder of the amount available to the State from allotments under section 125 (after making the expenditures required by clause (i) of this paragraph) shall be used for service activities for persons with developmental disabilities, and the planning, coordination, and administration of, and the advocacy for, the provision of such services.

"(F) The plan must provide that special financial and technical assistance shall be given to agencies or entities providing services for persons with developmental disabilities who are residents of geographical areas designated as urban or rural poverty areas.

"(5)(A)(i) The plan must provide that services furnished, and the facilities in which they are furnished, under the plan for persons with developmental disabilities will be in accordance with standards prescribed by the Secretary in regulations.

"(ii) The plan must provide satisfactory assurances that buildings used in connection with the delivery of services assisted under the plan will meet standards adopted pursuant to the Act of August 12, 1968 (known as the Architectural Barriers Act of 1968).

"(B) The plan must provide that services are provided in an individualized manner consistent with the requirements of section 123 (relating to habilitation plans).

"(C) The plan must contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this part will be protected consistent with section 110 (relating to rights of the developmentally disabled).

"(D) The plan must provide assurances that the State has undertaken affirmative steps to assure the participation in programs under this title of individuals generally representative of the population of the State, with particular attention to the participation of members of minority groups.

"(E) The plan must provide assurances that the State will provide the State Planning Council with a copy of each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in such State within 30 days after the completion of each such report or plan.

"(6)(A) The plan must provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 and other appropriate voluntary organizations, except that such volunteer services shall supplement, and shall not be in lieu of, services of paid employees.

"(B) The plan must provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions under the plan to provide alternative community living arrangement services, including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which

maximum efforts will be made to guarantee the employment of such employees.

"(7) The plan also must contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this part.

"(c) The Secretary shall approve any State plan and any modification thereof which complies with the provisions of subsection (b). The Secretary shall not finally disapprove a State plan except after reasonable notice and opportunity for a hearing to the State.

"(d)(1) At the request of any State, a portion of any allotment or allotments of such State under this part for any fiscal year shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Secretary for the proper and efficient administration of the State plan approved under this section; except that not more than 5 per centum of the total of the allotments of such State for any fiscal year, or \$50,000, whichever is less, shall be available for the total expenditures for such purpose by all of the State agencies designated under subsection (b)(1)(B) for the administration or supervision of the administration of the State plan. Payments under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

"(2) Any amount paid under paragraph (1) to any State for any fiscal year shall be paid on condition that there shall be expended from the State sources for such year for administration of the State plan approved under this section not less than the total amount expended for such purposes from such sources during the previous fiscal year.

"HABILITATION PLANS

"SEC. 123. (a) The Secretary shall require as a condition to a State's receiving an allotment under this part that the State provide the Secretary satisfactory assurances that each program (including programs of any agency, facility, or project) which receives funds from the State's allotment under this part (1) has in effect for each developmentally disabled person who receives services from or under the program a habilitation plan meeting the requirements of subsection (b), and (2) provides for an annual review, in accordance with subsection (c), of each such plan.

"(b) A habilitation plan for a person with developmental disabilities shall meet the following requirements:

"(1) The plan shall be in writing.

"(2) The plan shall be developed jointly by (A) a representative or representatives of the program primarily responsible for delivering or coordinating the delivery of services to the person for whom the plan is established, (B) such person, and (C) where appropriate, such person's parents or guardian or other representative.

"(3) The plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainments of such goals. Such goals should include the increase or support of independence, productivity, and integration into the community for the person. Such

objectives shall be stated specifically and in sequence and shall be expressed in behavioral or other terms that provide measurable indices of progress. The plan shall (A) describe how the objectives will be achieved and the barriers that might interfere with the achievement of them, (B) state an objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (C) provide for a program coordinator who will be responsible for the implementation of the plan.

"(4) The plan shall contain a statement (in readily understandable form) of specific habilitation services to be provided shall identify each agency which will deliver such services' shall describe the personnel (and their qualifications) necessary for the provision of such services, and shall specify the date of the initiation of each service to be provided and the anticipated duration of each such service.

"(5) The plan shall specify the role and objectives of all parties to the implementation of the plan.

"(c) Each habilitation plan shall be reviewed at least annually by the agency primarily responsible for the delivery of services to the person for whom the plan was established or responsible for the coordination of the delivery of services to such person. In the course of the review, such person and the person's parents or guardian or other representative shall be given an opportunity to review such plan and to participate in its revision.

"STATE PLANNING COUNCILS

"SEC 124. (a)(1) Each State which receives assistance under this part shall establish a State Planning Council which will serve as an advocate for persons with developmental disabilities. The members of the State Planning Council of a State shall be appointed by the Governor of the State from among the residents of that State. The Governor of each State shall make appropriate provisions for the rotation of membership on the Council of that State. Each State Planning Council shall at all times include in its membership representatives of the principal State agencies (including the State agency that administers funds provided under the Rehabilitation Act of 1973, the State agency that administers funds provided under the Education of the Handicapped Act, and the State agency that administers funds provided under title XIX of the Social Security Act for persons with developmental disabilities), higher education training facilities, each university affiliated facility or satellite center in the State, the State protection and advocacy system established under section 142, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services to persons with developmental disabilities in that State.

"(2) At least one-half of the membership of each such Council shall consist of persons who—

"(A) are persons with developmental disabilities or parents or guardians of such persons, or

"(B) are immediate relatives or guardians of persons with mentally impairing developmental disabilities,

who are not employees of a State agency which receives funds or provides services under this part, who are not managing employees (as defined in section 1126(b) of the Social Security Act) of any other entity which receives funds or provides services under this part, and who are not persons with an ownership or control interest (within the meaning of section 1124(a)(3) of the Social Security Act) with respect to such an entity.

"(3) Of the members of the Council described in paragraph (2)—

"(A) at least one-third shall be persons with developmental disabilities, and

"(B)(i) at least one-third shall be individuals described in subparagraph (B) of paragraph (2), and (ii) at least one of such individuals shall be an immediate relative or guardian of an institutionalized person with a developmental disability.

"(b) Each State Planning Council shall—

"(1) develop jointly with the State agency or agencies designated under section 122(b)(1)(B) the State plan required by this part, including the specification of services under section 122(b)(4)(B);

"(2) monitor, review, and evaluate, not less often than annually, the implementation of such State plan;

"(3) to the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting persons with developmental disabilities; and

"(4) submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

"STATE ALLOTMENTS

"SEC. 125. (a)(1) For each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 130 among the States on the basis of—

"(A) the population,

"(B) the extent of need for services for persons with developmental disabilities, and

"(C) the financial need,

of the respective States. Sums allotted to the States under this section shall be used in accordance with approved State plans under section 122 for the provision under such plans of services for persons with developmental disabilities.

"(2) Adjustments in the amounts of State allotments based on subparagraphs (A), (B), and (C) of paragraph (1) may be made not more often than annually. The Secretary shall notify States of any adjustment made not less than six months before the beginning of the fiscal year in which such adjustment is to take effect.

"(3)(A) Except as provided in paragraph (4), for any fiscal year the allotment under paragraph (1)—

"(i) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than \$100,000, and

"(ii) to any other State may not be less than the greater of \$250,000, or the amount of the allotment (determined without regard to subsection (d)) received by the State for the fiscal year ending September 30, 1984.

"(B) Notwithstanding subparagraph (A), if the aggregate of the amounts to be allotted to each State pursuant to subparagraph (A) in any fiscal year exceeds the total amount appropriated under section 130 for such fiscal year, the amount to be allotted to a State for such fiscal year shall be an amount which bears the same ratio to the amount which is to be allotted to the State pursuant to such subparagraph as the total amount appropriated under section 130 for such fiscal year bears to the total of the amount required to be appropriated under such section for allotments to provide each State with the allotment required by such subparagraph.

"(4) In any case in which amounts appropriated under section 130 for a fiscal year exceed \$47,000,000, the allotment under paragraph (1) for such fiscal year—

"(A) to each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than \$160,000; and

"(B) to each of the several States, Puerto Rico, or the District of Columbia, may not be less than \$300,000.

"(5) In determining, for purposes of paragraph (1)(B), the extent of need in any State for services for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services described, pursuant to section 122(b)(2)(C), in the State plan of the State.

"(b) Whenever the State plan approved in accordance with section 122 provides for participation of more than one State agency in administering or supervising the administration of designated portions of the State plan, the State may apportion its allotment among such agencies in a manner which, to the satisfaction of the Secretary, is reasonably related to the responsibilities assigned to such agencies in carrying out the purposes of the State plan. Funds so apportioned to State agencies may be combined with other State or Federal funds authorized to be spent for other purposes, provided the purposes of the State plan will receive proportionate benefit from the combination.

"(c) Whenever the State plan approved in accordance with section 122 provides for cooperative or joint effort between States or between or among agencies, public or private, in more than one State, portions of funds allotted to one or more such cooperating States may be combined in accordance with the agreements between the agencies involved.

"(d) The amount of an allotment to a State for a fiscal year which the Secretary determines will not be required by the State during the period for which it is available for the purpose for which allotted shall be available for reallocation by the Secretary from time to time, on such date or dates as the Secretary may fix (but not earlier than thirty days after the Secretary has published notice of the intention of the Secretary to make such reallocation in the Federal Register), to other States with respect to which such a determination has not been made, in proportion to the original allotments

of such States for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount so reallocated to a State for a fiscal year shall be deemed to be a part of its allotment under subsection (a) for such fiscal year.

"PAYMENTS TO THE STATES FOR PLANNING, ADMINISTRATION AND SERVICES

"SEC. 126. From each State's allotments for a fiscal year under section 125, the State shall be paid the Federal share of the expenditures, other than expenditures for construction, incurred during such year under its State plan approved under this part. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.

"WITHHOLDING OF PAYMENTS FOR PLANNING, ADMINISTRATION AND SERVICES

"SEC. 127. Whenever the Secretary, after reasonable notice and opportunity for hearing to the State Planning Council and the appropriate State agency designated pursuant to section 122(b)(1) finds that—

"(1) there is a failure to comply substantially with any of the provisions required by section 122 to be included in the State plan; or

"(2) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this part, the Secretary shall notify such State Council and agency or agencies that further payments will not be made to the State under section 125 (or, in the discretion of the Secretary, that further payments will not be made to the State under section 125 for activities in which there is such failure), until the Secretary is satisfied that there will no longer be such failure. Until the Secretary is so satisfied, the Secretary shall make no further payment to the State under section 125, or shall limit further payment under section 125 to such State to activities in which there is no such failure.

' NONDUPLICATION

"SEC. 128. In determining the amount of any State's Federal share of the expenditures incurred by it under a State plan approved under section 122, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any provision of law other than section 125, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds.

"APPEALS BY STATES

"SEC. 129. If any State is dissatisfied with the Secretary's action under section 122(c) or section 127, such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by the Secretary for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside the order of the Secretary. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of the fact and may modify the previous action of the Secretary, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Secretary's action.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 130. For allotments under section 125, there are authorized to be appropriated \$50,250,000 for fiscal year 1985, \$53,400,000 for fiscal year 1986, and \$56,500,000 for fiscal year 1987.

*"PART C—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS**"PURPOSE*

"SEC. 141. It is the purpose of this part to provide for allotments to support a system in each State to protect the legal and human rights of persons with developmental disabilities in accordance with section 142.

"SYSTEM REQUIRED

"SEC. 142. (a) In order for a State to receive an allotment under part B—

"(1) the State must have in effect a system to protect and advocate the rights of persons with developmental disabilities;

"(2) such system must—

"(A) have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State and to provide infor-

mation on and referral to programs and services addressing the needs of persons with developmental disabilities;

"(B) not be administered by the State Planning Council;

(C) be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities; and

"(D) except as provided in subsection (b), be able to obtain access to the records of a person with developmental disabilities who resides in a facility for persons with developmental disabilities if—

"(i) a complaint has been received by the system from or on behalf of such person; and

"(ii) such person does not have a legal guardian or the State or the designee of the State is the legal guardian of such person;

"(3) the State must provide assurances to the Secretary that funds allotted to the State under this section will be used to supplement and increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds;

"(4) the State must provide assurances to the Secretary that such system will be provided with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in the State within 30 days after the completion of each such report or plan; and

"(5) the State must provide assurances satisfactory to the Secretary that the agency implementing the system will not be redesignated unless there is good cause for the redesignation and unless notice has been given of the intention to make such redesignation to persons with developmental disabilities or their representatives.

"(b) Prior to October 1, 1986, the provisions of paragraph (2)(D) of subsection (a) shall not apply to any State in which the laws of the State prohibit the system required under such subsection from obtaining access to the records of a person with developmental disabilities under the conditions described in such paragraph.

"(c)(1) To assist States in meeting the requirements of subsection (a) the Secretary shall allot to the States the amounts appropriated under section 143. Allotments and reallotments of such sums shall be made on the same basis as the allotments and reallotments are made under the first sentence of subsection (a)(1) and subsection (d) of section 125, except that in any case in which—

"(A) the total amount appropriated under section 143 for a fiscal year is at least \$11,000,000—

"(i) the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than \$80,000; and

"(ii) the allotment to each of the several States, Puerto Rico, and the District of Columbia for such fiscal year shall not be less than \$150,000; or

"(B) the total amount appropriated under section 143 for a fiscal year is less than \$11,000,000, the allotment to each State (other than Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) shall not be less than \$50,000.

"(2) A State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under subsection (a).

"(3) Notwithstanding paragraph (1), if the aggregate of the amounts of the allotments to be made in accordance with such paragraph for any fiscal year exceeds the total of the amounts appropriated for such allotments under section US, the amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such paragraph as the total of the amounts appropriated for that year under section 143 bears to the aggregate amount required to make an allotment to each of the States in accordance with paragraph (1).

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 143. For allotments under section 142, there are authorized to be appropriated \$13,750,000 for fiscal year 1985, \$14,600,000 for fiscal year 1986, and \$15,500,000 for fiscal year 1987. The provisions of section 1913 of title 18, United States Code, shall be applicable to all moneys authorized under the provisions of this section.

"PART D—UNIVERSITY AFFILIATED FACILITIES

"PURPOSE

"SEC. 151. The purpose of this part is to provide for grants to university affiliated facilities to assist in the provision of interdisciplinary training, the conduct of service demonstration programs, and the dissemination of information which will increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.

"GRANT AUTHORITY

"SEC. 152. (a) From appropriations under section 154, the Secretary shall make grants to university affiliated facilities to assist in the administration and operation of the activities described in section 102(13).

"(b) The secretary may make one or more grants to a university affiliated facility receiving a grant under subsection (a) to support one or more of the following activities:

"(1) Conducting—

"(A) a study of the feasibility of establishing a university affiliated facility or a satellite center in an area not served by a university affiliated facility, including an assessment of the needs of the area for such a facility or center; or

"(B) a study of the ways in which such university affiliated facility, singly or jointly with other university affiliated facilities which have received a grant under subsection (a), can assist in establishing one or more satellite centers

which would be located in areas not served by a university affiliated facility.

A study under subparagraph (A) or subparagraph (B) shall be carried out in consultation with the State Planning Council for the State in which the university affiliated facility conducting the study is located and the State Planning Council for the State in which the university affiliated facility or satellite center would be established.

"(2) Provision of service-related training to parents of persons with developmental disabilities, professionals, volunteers, or other personnel to enable such parents, professionals, volunteers, or personnel to provide services to increase or maintain the independence, productivity, and integration into the community of persons with developmental disabilities.

"(3) Conducting an applied research program designed to produce more efficient and effective methods (A) for the delivery of services to persons with developmental disabilities, and (B) for the training of professionals, paraprofessionals, and parents who provide these services.

The amount of a grant under paragraph (1) may not exceed \$25,000.

"(c) The Secretary may make grants to pay part of the costs of establishing satellite centers and may make grants to satellite centers to pay part of their administration and operation costs. A satellite center which receives a grant under this section may engage in the activities described in subparagraph (A), (B), or (C) of section 102(13).

"(d)(1) The Secretary may not make a grant under subsection (c) for the fiscal year ending on September 30, 1985, to a satellite center which has not received a grant under such subsection or section 121(c) (as such section was in effect prior to October 1, 1984) unless—

"(A) a study assisted under subsection (b)(1)(A) of this section has established the feasibility of establishing or operating such center, except that such study shall not be required to contain an assessment of the need for such center in the area in which such center will be located; or

"(B) a study assisted under section 121(b)(1) (as in effect prior to October 1, 1984) has established the feasibility of establishing or operating such center.

"(2) The Secretary may not make a grant under subsection (a) or subsection (c) for a fiscal year beginning after September 30, 1985, to a university affiliated facility or a satellite center which has not received a grant under this section or section 121 (as such section was in effect prior to October 1, 1984) unless—

"(A) a study assisted under subsection (b)(1)(A) has been conducted with respect to such facility or center by a university affiliated facility; and

"(B) such study has established the feasibility of establishing or operating such facility or center.

"APPLICATIONS

"SEC. 153. (a) Not later than six months after the date of the enactment of the Developmental Disabilities Act of 1984, the Secretary

shall establish by regulation standards for university affiliated facilities. Such standards shall reflect the special needs of persons with developmental disabilities who are of various ages, and shall include performance standards relating to each of the activities described in section 102(13).

"(b) No grants may be made under section 152 unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner, and contain such information, as the Secretary may require. Such an application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that—

"(1) the making of the grant will (A) not result in any decrease in the use of State, local, and other non-Federal funds for services for persons with developmental disabilities and for training of persons to provide such services, which funds would (except for such grant) be made available to the applicant, and (B) be used to supplement and, to the extent practicable, increase the level of such funds;

"(2)(A) the applicant's facility is in full compliance with the standards established under subsection (a), or

"(B)(i) the applicant is making substantial progress toward bringing the facility into compliance with such standards, and (ii) the facility will, not later than three years after the date of approval of the initial application or the date standards are promulgated under subsection (a), whichever is later, fully comply with such standards; and

"(3) the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this part will be protected consistent with section 110 (relating to rights of the developmental disabled).

"(c) The Secretary shall establish such a process for the review of applications for grants under section 152 as will ensure, to the maximum extent feasible, that each Federal agency that provides funds for the direct support of the applicant's facility reviews the application.

"(d)(1) If the total amount appropriated under section 154 for a fiscal year is at least \$8,500,000, the amount of any grant under section 152(a) to a university affiliated facility shall not be less than \$175,000 for such fiscal year and the amount of any grant under section 152(c) to a satellite center shall not be less than \$75,000 for such fiscal year.

"(2) If the total amount appropriated under section 154 is less than \$8,500,000, the amount of any grant under section 152(a) to a university affiliated facility shall not be less than \$150,000 for such fiscal year and the amount of any grant under section 152(c) to a satellite center shall not be less than \$75,000 for such fiscal year.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 154. For the purpose of making grants under section 152, there are authorized to be appropriated \$9,000,000 for fiscal year 1985, \$9,600,000 for fiscal year 1986, and \$10,100,000 for fiscal year

"PART E—SPECIAL PROJECT GRANTS

"PURPOSE

"SEC. 161. *The purpose of this part is to provide for grants for demonstration projects to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities.*

"GRANT AUTHORITY

"SEC. 162. (a) *The Secretary may make grants to public or non-profit private entities for—*

"(1) demonstration projects—

"(A) which are conducted in more than one State,

"(B) which involve the participation of two or more Federal departments or agencies, or

"(C) which are otherwise of national significance, and which hold promise of expanding or otherwise improving services to persons with developmental disabilities (especially those who are multihandicapped or disadvantaged, including Native Americans, Native Hawaiians, and other underserved groups); and

"(2) technical assistance and demonstration projects (including research, training, and evaluation in connection with such projects) which hold promise of expanding or otherwise improving protection and advocacy services relating to the State protection and advocacy system described in section 142.

Projects for the evaluation and assessment of the quality of services provided persons with developmental disabilities which meet the requirements of subparagraphs (A), (B), and (C) of paragraph (1) may be included as projects for which grants are authorized under such paragraph.

"(b) No grant may be made under subsection (a) unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe. The Secretary may not approve such an application unless each State in which the applicant's project will be conducted has a State plan approved under section 122, and unless the application provides assurances that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under projects assisted under this part will be protected consistent with section 110 (relating to the rights of the developmentally disabled). The Secretary shall provide to the State Planning Council for each State in which an applicant's project will be conducted an opportunity to review the application for such project and to submit its comments on the application.

"(c) Payments under grants under subsection (a) may be made in advance or by way of reimbursement and at such intervals and on such conditions, as the Secretary finds necessary. The amount of any grant under subsection (a) shall be determined by the Secretary.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 163. To carry out this part, there are authorized to be appropriated \$2,700,000 for fiscal year 1985, \$2,800,000 for fiscal year 1986, and \$3,100,000 for fiscal year 1987."

STUDY ON INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

SEC. 3. (a) Within six months after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report containing—

(1) recommendations for improving services for mentally retarded persons and persons with developmental disabilities provided under an approved State plan under title XIX of the Social Security Act so that the manner in which such services are provided will increase the independence, productivity, and integration into the community of mentally retarded persons and persons with developmental disabilities;

(2) recommendations for services provided for mentally retarded persons and persons with developmental disabilities under waivers granted under section 1915(c) of the Social Security Act so that the manner in which such services are provided can be improved to increase the independence, productivity, and integration into the community of mentally retarded persons and persons with developmental disabilities; and

(3) comments by each of the officials specified in clauses (2) through (4) of subsection (b) on the recommendations included in the report pursuant to paragraph (1), including comments concerning the effect of such recommendations, if implemented, on programs carried out by such officials.

(b) The Secretary, in preparing the report required by subsection (a), shall consult with—

(1) the Administrator of the Health Care Financing Administration of the Department of Health and Human Services (or the designee of the Administrator);

(2) the Commissioner of the Administration for Developmental Disabilities of the Department of Health and Human Services (or the designee of the Commissioner);

(3) the Chairman of the National Council on the Handicapped (or the designee of the Chairman); and

(4) the Assistant Secretary of Education for Special Education and Rehabilitative Services (or the designee of the Assistant Secretary).

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

JOHN D. DINGELL
HENRY A. WAXMAN,
JAMES H. SCHEUER,
JAMES T. BROYHILL,
EDWARD L. MADIGAN,

Managers on the Part of the House.

ORRIN HATCH,
LOWELL P. WEICKER, Jr.,
ROBERT T. STAFFORD,
EDWARD M. KENNEDY,
JENNINGS RANDOLPH,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5603) to amend the Public Health Service Act to revise and extend the authorities of that Act for assistance for alcohol and drug abuse and mental health services and to revise and extend the Developmental Disabilities Assistance and Bill of Rights Act, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The House bill provides for an extension of the authorities of the Alcohol, Drug Abuse, and Mental Health Block Grant.

The Senate amendments contain no comparable provision.

The House recedes.

REORGANIZATION OF THE ACT

The Senate amendments would reorganize the current Act into 5 parts.

Part A: General Provision

Part B: Federal Assistance for Planning and Service Activities for Persons with Developmental Disabilities

Part C: Protection and Advocacy of Individual Rights

Part D: University Affiliated Facilities

Part E: Special Project Grants

The House bill retains the current organizational structure of the Act.

The House recedes.

TITLE

The Senate amendments' title is "To revise and extend programs for persons with developmental disabilities."

The short title of the Senate amendments is "The Developmental Disabilities Act of 1984".

The House bill's title is "To amend the Public Health Service Act to revise and extend the authorities of that Act for assistance for alcohol and drug abuse and mental health services and to revise and extend the Developmental Disabilities Assistance and Bill of Rights Act".

The House recesses.

PART A: GENERAL PROVISIONS

The Senate amendments would add that the purpose of this title is to help assure that persons with developmental disabilities achieve their maximum potential through increased independence, productivity and integration into the community.

The House bill contains no comparable provision.

The House recesses. The Conferees note the terms "independence, productivity, and integration" are used here as goals of the program and are not meant to be used as limitations of programs or of individual eligibility. A program for persons who may not be independent or income-producing or integrated into the community is an eligible grantee as long as such program assures care, treatment and other services and has the goal of increasing or supporting independence, integration and productivity.

The Senate amendments would define "independence" to mean the extent to which persons with developmental disabilities exert control over their own lives.

The House contains no comparable provision.

The House recesses.

The Senate amendments would define "productivity" to include engagement in income-producing work or work which contributes to a household or community.

The House bill contains no comparable provision.

The House recesses.

The Senate amendments would define "integration" to include the use of community resources that are used by nonhandicapped citizens and the residence in homes or homelike settings which are near community resources and which include contact with nonhandicapped persons.

The House bill contains no comparable provision.

The House recesses.

The Senate amendments would authorize (1) services to promote and coordinate activities to prevent developmental disabilities and (2) nonvocational social development services.

The House bill would also authorize preventive activities.

The House recesses.

The Senate amendments would amend the term service activities to include "the provision of specialized services in the area which responds to unmet needs of persons with developmental disabilities".

The House bill contains no comparable provision.

The House recesses.

The Senate amendments would amend "priority services" to mean alternative community living arrangement services, employment related activities and child development services. Case man-

agement services are included in the definition of these three terms.

The House bill contains no comparable provision.

The House recedes with an amendment deleting case management services as part of each priority services area and adding case management as a fourth priority area.

The Senate amendments would define "supported employment" to mean paid employment for persons for whom competitive employment at or above the minimum wage is unlikely and who, because of their disabilities, need intensive, ongoing support in a work setting, including settings in which nonhandicapped persons are employed. The support includes any activity needed to sustain paid work including supervision, training and transportation.

The House bill contains no comparable provision.

The House recedes.

The Senate amendments would expand "satellite center" to allow such centers to include all functions of university affiliated facilities.

The House bill would amend "satellite center" to include a public or nonprofit entity affiliated with or an integral part of a college or university which provides at least interdisciplinary training and dissemination of findings.

Both provisions are accepted.

The Senate amendments would expand the definition of "university affiliated facility" to include facilities that provides at least the following activities: interdisciplinary training conducted at the facility and through outreach activities; exemplary services in community settings; and technical assistance and dissemination of findings to increase independence, productivity and community integration of persons with developmental disabilities.

The House bill contains no such provision.

The House recedes.

The Senate amendments would amend current law to allow the Federal share of the State grant projects to be 75 percent of the aggregate cost of such projects, except in poverty areas where the Federal share may be 90 percent of such aggregate cost.

The House bill contains no such provision.

The House recedes with an amendment which replaces "shall be" to "may not exceed". It is the intent of the Conferees that 25 percent of the support of projects under parts B and D be provided from non-Federal sources unless the projects are located in an urban or rural poverty area, in which case 10 percent of the support should be provided from non-Federal sources. It is not the intent of the Conferees that States or grantees be required by the Secretary to supply more than these levels from non-Federal sources, although if States or grantees wish to "over-match" they are clearly free to do so.

The Senate amendments would require State planning councils to submit an annual report to the Secretary concerning activities under the State grant program. Such report shall include a description of the program's activities and accomplishments, a comparison of accomplishments and goals and objectives, an accounting of the use of State grant funds, a specification of funds allotted to various

types of agencies, and attendance records at State planning council meetings.

The House bill would require the Secretary to make an annual report to the Congress on State activities and to make such reports available to States and the general public.

The House recedes with an amendment. The Conferees recommend that the Secretary prescribe the form of the annual State report. The Conferees recommend that the following information be included:

- (1) the total amount of Federal funds for the fiscal year paid to the State for the State grant program;
- (2) the total amount of the non-Federal share for projects funded by the State grant program during the fiscal year;
- (3) the total amount of Federal funds and the total amount of non-Federal funds obligated to carry out the State grant program during the fiscal year;
- (4) the total amount of Federal funds and the total amount of non-Federal funds expended to carry out the State grant program during the fiscal year;
- (5) the total amount of Federal funds provided under the State grant program which were not obligated or expended during the fiscal year;
- (6) the total amount of Federal funds expended for travel by council members during the fiscal year;
- (7) a specification of the amount and proportion of Federal funds paid to the State for the State grant program for the fiscal year which were allocated to—
 - (A) State agencies;
 - (B) Local governments and local government agencies;
 - (C) nonprofit private agencies; and
- (8) a description of the extent to which the individuals who actually attended meetings of the State Planning Council during the fiscal year reflect the requirements for membership on such Council.

The Senate amendments would require the protection and advocacy systems to submit an annual report to the Secretary which describes its activities and accomplishments.

The House bill contains no such provision.

The House recedes with an amendment which requires that the annual report also include information about expenditures made during the preceding fiscal year.

The Senate amendments would require the Secretary to submit to the President, the Congress, and the National Council on the Handicapped an annual report on the programs authorized under the Act, progress made and services needed to improve the independence, productivity and integration into the community of persons with developmental disabilities. In addition, the Secretary would submit a report on the States' manpower and training assessments.

The House bill contains no such provision.

The House recedes with an amendment which deletes the requirement for a report on the States' manpower and training assessments.

The Senate amendments would require the Secretaries of HHS and Education to establish an interagency committee composed of representatives of the Administration on Developmental Disabilities, the Office of Special Education and Rehabilitative Services and other Federal departments as appropriate to plan and coordinate Federal activities for persons with developmental disabilities.

The House bill contains no such provision.

The House recedes with an amendment which includes the Department of Labor as a member of the interagency committee.

PART B: FEDERAL ASSISTANCE FOR PLANNING AND SERVICE ACTIVITIES
FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

The Senate amendments would require that the State not consolidate the State plan with any other State plan and not substitute any other plan for the required State plan unless the State Planning Council and the State administering agency consent in writing to such consolidation or substitution.

The House bill contains no such provision.

The Senate recedes. The Conferees would like to underscore the unique and critical role of the Developmental Disabilities State Plan. Since this plan is the document developed by the council to shape the State implementation of the Developmental Disabilities program, the Conferees believe it would be inappropriate to consolidate or substitute such a plan with other State plans unless the Council has final review of the plan, without subsequent additions, deletions, or revisions. It is the view of Conferees that any consolidation without such final review is an unauthorized infringement of the planning function of the State council under current law and under the proposed legislation.

The Senate amendments would require that the State plan provide that each designated State agency make reports and maintain access to records as needed by the Secretary of each State planning council.

The House bill would require each State to submit annual reports.

The House recedes with an amendment which deletes the requirement for the State agency to make reports to the Secretary and the State planning council from time to time. The provision regarding access to State records by the Secretary and the councils is retained.

The Senate amendments would add a requirement that not more than 25 percent of State grant funds be allocated to the designated State agency for the provision of services by such agency.

The House bill contains no such provision.

The House recedes.

The Senate amendments would amend the priority services areas so that employment related activities must be specified as a priority in the State plan and in addition either community living arrangement services or child development services must be specified.

The House bill contains no similar provision.

The House recedes with an amendment which would add case management as a priority service (as in current law) and which re-

quires employment-related activities to be provided as a priority service after fiscal year 1986 only if appropriations equal or exceed the level of \$50.25 million. The Conferees note that the mandatory employment-related activities service carries with it no minimum allocation of funds by the States. The Conferees do not intend for the mandatory nature of the provision of the employment-related activities service to diminish a State's ability to provide its other designated services. If a State elects to devote a substantial portion of the State allotment to the employment-related activities service, clearly it is free to do so. Indeed, a State may elect to devote its entire allotment to the employment-related activities service, if it chooses. The Conferees do not, however, intend to force a State to displace other services which it is now providing or has elected to provide. The Conferees would like to clarify that "employment-related activities" may be chosen as a priority prior to fiscal year 1987 if a State so decides.

The Conferees intend that the new employment activities priority be complementary to other programs and services aimed at preparing developmentally disabled individuals for productive activity and work. Eligible developmentally disabled individuals should receive appropriate training and other services under the State vocational rehabilitation program. The new employment-related activities priority is not intended to undermine any mandate for services to eligible developmentally disabled persons under vocational rehabilitation, independent living or other training programs.

The Senate amendments would amend the priority services areas so that when the appropriation for the State grant program exceeds \$60,000,000 States may choose all three priority services.

The House bill contains no such provision.

The House recedes with an amendment which allows States to choose three priorities, beginning in fiscal year 1987.

The Senate amendments would require that the long-term habilitation goals set forth in the habilitation plan include the increase of support of independence, productivity and integration into the community for the developmentally disabled person.

The House bill contains no such provision.

The House recedes. The Conferees note that "independence, productivity and integration" are meant to serve as ideal goals and are not meant to act as limitations of programs or individual eligibility.

The Senate amendments would require that each State planning council at all times include in its membership representatives of the State agencies administering funds provided under the Rehabilitation Act of 1973, the Education of the Handicapped Act, and the Medicaid program (title XIX of the Social Security Act). In addition, the protection and advocacy system and each University Affiliated Facility or Satellite center in the States is to be represented on the State planning council.

The House bill contains no such provision.

The House recedes. The Conferees do not intend that each interest enumerated necessarily be represented by a different individual. One council member may fulfill two or more requirements for membership (e.g., one person may represent both a university affiliated facility and a higher education training facility).

The Senate amendments would require that the Secretary not revise the basis on which allotments are made more than once every three years. When revisions are to be made, the Secretary is to provide written notice of the change to States at least six months prior to the date of submission of the State plan.

The House bill would require that adjustments in the amounts of State allotments be made annually and that States be notified six months before the beginning of the fiscal year.

The Senate recedes with an amendment which states that the adjustments in allotments *may* (rather than "*shall*") be made no more frequently than annually.

The Senate amendments would require that a State's allotment not be less than the amount received in FY 1984.

The House bill contains no such provision.

The Senate recedes.

The Senate amendments would set the minimum allotment for the territories at \$135,000 if the total appropriation exceeds \$45,000,000.

The House bill would set the minimum allotment for the territories at \$200,000 if the appropriation exceeds \$47,000,000 or at \$100,000 if appropriation do not exceed \$47,000,000.

The House recedes with an amendment which establishes \$160,000 as the minimum allotment for territories when appropriation reach \$47,000,000. When the appropriation is less than \$47,000,000 the minimum allotment for territories shall be \$100,000.

The Senate amendments would set the minimum allotment for the States at \$300,000 if the total appropriations exceed \$45,000,000.

The House bill would set the minimum allotment for the States at \$350,000 or the amount received in FY 1983 if the appropriations exceed \$47,000,000; or at \$250,000 if appropriations do not exceed \$47,000,000.

The House recedes with an amendment which establishes \$47,000,000 as the appropriation level at which \$300,000 would become the new minimum. When the appropriation is less than \$47,000,000 the minimum allotment shall be \$250,000.

The Senate amendments and the House bill would authorize the following amounts for the State grant program.

[In millions of dollars]

	Senate	House
Fiscal year:		
1985.....	54.5	46.0
1986.....	58.3	48.8
1987.....	62.4	52.0
1988.....		55.0

The House recedes with an amendment which authorizes state grants at the following levels:

Fiscal year:	Millions
1985.....	\$50.25
1986.....	53.4
1987.....	56.5

PART CI PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

The Senate amendments would provide that the protection and advocacy systems have the authority to provide information and referral services.

The House bill contains no such provision.

The House recedes. The Conferees note, however, that it is not their intention that the provision of information and referral services divert significant resources from the ongoing responsibilities of protection and advocacy agencies.

The Senate amendments would require that the protection and advocacy system have access to the records of developmentally disabled persons living in residential facilities if a complaint has been received on behalf of such person and if such person does not have a legal guardian or if the State is the legal guardian. Prior to Oct. 1, 1986, this access provision does not apply to any State in which State law prohibits such access.

The House bill contains no such provision.

The House recedes with an amendment which deletes the phrase "who receives services under this title". The Conferees intend for all developmentally disabled persons who reside in facilities for developmentally disabled persons to be eligible for services from the protection and advocacy system.

The Senate amendments would require that States provide protection and advocacy systems a copy of each annual survey report and plan of corrections made with respect to any intermediate care facility for the mentally retarded within 30 days of completion of such report and plan.

The House bill contains no such provision.

The House recedes.

The Senate amendments would require that States submit to the Secretary a report describing the protection and advocacy system and the expenditures of such system within 90 days after the end of each fiscal year.

The House bill contains no such provision.

The Senate recedes. The Conferees note that such a report is already required in section 107 of the bill.

The Senate amendments would provide that States not redesignate the administering agency for the protection and advocacy system unless the State determines that good cause exists to warrant such redesignation. If a State determines that good cause exists, the State must give public notice of its intent and give persons with developmental disabilities or their representatives an opportunity to comment on such proposed redesignation.

The House bill includes a similar provision.

The Senate recedes.

The Senate amendments would provide that a State not receive an allotment that is less than the allotment received in FY 1984.

The House bill contains no such provision.

The Senate recedes.

The Senate amendments would provide that territories receive not less than \$60,000 and States receive not less than \$100,000 for

protection and advocacy systems when the total appropriations exceed \$9,500,000.

The House bill would provide that territories receive not less than \$100,000 if the total appropriations exceed \$10,000,000 in any fiscal year. If the appropriations are less than \$10,000,000, the allotment to territories would not be less than \$50,000. If total appropriations exceed \$10,000,000 the State allotment would not be less than \$150,000 or the amount received in FY 1983. If the appropriations are less than \$10,000,000 the State allotment would not be less than \$50,000.

The Senate recedes with an amendment which establishes \$150,000 for States as a minimum and \$80,000 for territories as a minimum when appropriations equal or exceed \$11,000,000. When the appropriations are less than \$11,000,000 the minimum allotment shall be \$50,000 for States.

The Senate amendments and House bill would authorize the following amounts for the protection and advocacy system:

[In millions of dollars]

	Senate	House
Fiscal year:		
1985	15.0	12.5
1986	16.1	15.0
1987	17.2	17.5
1988		20.0

The House recedes with an amendment which authorizes the following figures:

Fiscal year:	<i>Millions</i>
1985	13.75
1986	14.6
1987	15.5

PART D: UNIVERSITY AFFILIATED FACILITIES

The Senate amendments would authorize grants for studies of the feasibility of establishing new university affiliated facilities as well as satellite centers. A needs assessment is included as part of the feasibility study.

The House bill contains no such provision.

The House recedes.

The Senate amendments would authorize the university affiliated facilities to provide service-related training to parents of persons with developmental disabilities, professionals volunteers or personnel who provide services to increase or maintain the independence, productivity and integration into the community of persons with developmental disabilities.

The House bill contains no such provision.

The House recedes. The Conferees wish to emphasize that UAF's have an important responsibility to extend their research, training and service efforts to include adult and elderly developmentally disabled persons who are increasing in numbers and whose needs are largely unmet today. UAF training programs must reach out to professionals in those disciplines which provide generic services to adult and elderly developmentally disabled persons.

The Senate amendments would authorize satellite centers to engage in the same activities in which university affiliated facilities may engage.

The House bill contains no such provision.

The House recedes.

The Senate amendments would prohibit the Secretary from making a grant to a new university affiliated facility or satellite center after Sept. 30, 1985, unless a feasibility study has been conducted and the need for such a facility has been documented.

The House bill contains no such provision.

The House recedes.

The Senate amendments would authorize the Secretary to spend funds in excess of \$7,800,000 in the following order of priority: to establish new satellite centers and university affiliated facilities; to make grants to existing satellite centers that have the capacity to become university affiliated facilities; to make grants to existing university affiliated facilities and satellite centers.

The House bill contains no such provision.

The Senate recedes.

The Senate amendments would require that applications for funds under this part include assurances that the human rights of all persons with developmental disabilities who are receiving services under the project will be protected according to the rights included under section 110 of this Act.

The House bill contains no such provision.

The House recedes.

The House bill would establish a \$200,000 minimum allotment for university affiliated facilities.

The Senate amendments retain current law.

The Senate recedes with an amendment which would establish \$8,500,000 as the appropriation level at which the minimum allocation for a university affiliated facility would be \$175,000 when appropriations are less than \$8,500,000 the State minimum shall be \$150,000.

The Senate amendments and the House bill would authorize the following amounts for university affiliated facilities:

[In millions of dollars]

	Senate	House
Fiscal year:		
1985.....	9.4	8.0
1986.....	10.0	8.5
1987.....	10.8	9.0
1988.....		9.5

The House recedes with an amendment which authorize amounts at the following levels:

Fiscal year:	Millions
1985.....	\$9
1986.....	9.6
1987.....	10.1

PART E: SPECIAL PROJECT GRANTS

The Senate amendments would give special emphasis to special projects that expand or improve services to Native Americans and Native Hawaiians.

The House bill contains no such provision.

The House recedes with an amendment specifying that emphasis is to go to all underserved groups, including Native Americans and Native Hawaiians.

The Senate amendments would require that applications for funds under this part include assurances that the human rights of all persons with developmental disabilities who are receiving services under the project will be protected according to the rights included under section 110 of this Act.

The House bill contains no such provision.

The House recedes.

The Senate amendments would prohibit the Secretary from consolidating the authority to make grants under this section with any other authority to make grants which the Secretary has under any other law.

The House bill contains no such provision.

The Senate recedes.

The Conferees emphasize that funds appropriated under Special Projects may not be combined with funds appropriated under any other Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this title are separately identified in such grant or payment and are used for the purposes of this part.

The Senate amendments would add a provision requiring the Secretary to prepare and submit to Congress a report containing recommendations for improving services for mentally retarded and developmentally disabled persons under an approved State plan under title XIX of the Social Security Act. The report is to be completed within 6 months of enactment of the 1984 Act. The report and recommendations are to address improvements in services that will increase the independence, productivity and integration into the community of mentally retarded persons and persons with developmental disabilities. The report is to include recommendations regarding the waiver program under which persons are served in small, community settings. (Section 1915(c) of the Social Security Act.)

The House bill contains no such provision.

The House recedes with an amendment. The Conferees direct the Secretary to adequately fund this study. The Conferees would like to underscore the importance of this report for improving services for developmentally disabled and mentally retarded persons under Title XIX. The Conferees direct the Secretary to consider the recent findings of the Senate Subcommittee on the Handicapped concerning Title XIX services for developmentally disabled and mentally retarded persons.

The Senate amendments would provide that not more than \$75,000 of the amount appropriated under this part for FY 1985 be used to conduct a study.

The House bill contains no such provision.

The Senate recedes. The Conferees, however, expect the Secretary to devote adequate funding to the study from the discretionary funds.

The Senate amendments and the House bill would authorize the following amounts for special projects.

[In millions of dollars]		
	Senate	House
Fiscal year:		
1985.....	3.2	2.7
1986.....	3.7	2.9
1987.....	4.0	3.1
1988.....	3.3	

The House recedes with an amendment which authorizes funding at the following levels:

Fiscal year:	Millions
1985.....	2.7
1986.....	2.8
1987.....	3.1

The Senate amendments would provide that this Act take effect on Oct.* 1, 1984, except for sections 108(b), 153(a) and 163 which shall take effect on the date of enactment.

The House bill contains no such provision.

The Senate recedes.

JOHN D. DINGELL,
HENRY A. WAXMAN,
JAMES H. SCHEUER,
JAMES T. BROYHILL,
EDWARD R. MADIGAN,

Managers on the Part of the House.

ORRIN G. HATCH,
LOWELL P. WEICKER, Jr.,
ROBERT T. STAFFORD,
EDWARD M. KENNEDY,
JENNINGS RANDOLPH,

Managers on the Part of the Senate.

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Developmental Disabilities Program

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